Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GORDON W. ROGERS,

Petitioner

versus

COMMISSIONER OF INTERNAL REVENUE

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can a Court of Appeals lawfully refuse to accept an appeal on grounds of untimely filing when the facts and law show that the decision sought to be appealed was obtained by fraud on the lower court--the fraud consisting of issuance by the Respondent (Commissioner of Internal Revenue) of a notice of deficiency in income taxes in the absence of

(a) a return made by a taxpayer;

(b) foundational evidence of a tax-generating activity; and

(c) evidence by which to determine an amount of tax imposed?

2. Can a Court of Appeals lawfully dismiss an appeal as being untimely when subject-matter jurisdiction of the court of first instance (the United States Tax Court) has not been established by

substantial evidence even after being challenged for lacking

(a) a valid notice of deficiency; and

(b) a petition to redetermine a deficiency?

PARTIES TO THE PROCEEDING

Parties to this proceeding, as noted in the caption of the case, are

Gordon W. Rogers,

Petitioner,

a private individual In Propria Persona,

versus

Commissioner of Internal Revenue,

Respondent,

who is represented by

Gary R. Allen, Chief
Tax Division, Department of Justice
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Petitioner is not aware of any other parties.

TABLE OF CONTENTS

Page

OPINIONS DELIVERED ---------- 10

STATEMENT OF JURISDICTION ---------- 12

CONSTITUTIONAL PROVISIONS INVOLVED---- 13

STATEMENT OF THE CASE ---------- 14

ARGUMENT ---------- 17

SUMMARY ---------- 17

DISCUSSION ---------- 21

I. THE TAX COURT'S DECISION WAS OBTAINED BY FRAUD ---------- 21

II. THE TAX COURT LACKED JURISDICTION TO ADJUDICATE. ---------- 33

CONCLUSION ---------- 38

RELIEF SOUGHT ---------- 40

APPENDIX "A": Appeals Court's Order of Dismissal ---------- 42

APPENDIX "B": Tax Court's rejection of motions to vacate judgment ---------- 44

APPENDIX "C": Tax Court's Decision --- 45

TABLE OF AUTHORITIES

Cases **Page**

Abrams v. C.I.R., 787 F.2d 939, 941 (4th Cir. 1986) ---------- 18

Alaska S.S. Co. v U.S. 290 US 256 (1933) 29

American Fire & Cas. Co. v. Finn. 341 US 6 (1951) ---------- 39

Badaracco v. Commissioner. 464 US 386, 398 (1984) ---------- 24-25

Brushaber v. Union Pacific RR. 240 US 1, 16-19 (1916) ---------- 28

Chicago, M. St. P.& P. R. Co. v. Risty, 276 US 567 (1928) ---------- 16-17

Commissioner v. Acker, 361 US 87, 92, 93; 4 L.Ed. 127, 131, 132 (1959) --------- 27

Commissioner of Internal Revenue v. South Texas Lumber Co., 333 U.S. 496, 501, (1948) ---------- 26

Eckert v Lane, 678 F.Supp 773, 775 (DC WD Ark. 1988) ---------- 39

Eidman v Martinez 184 US 578 (1902) -- 30

Espinoza v Farah Mfg Co. 414 US 86(1973) 29

Fawcus Machine Co. v. United States. 282 US 375, 378 (1931) ---------- 26

Federal Maritime Com. v Seatrain Lines Inc., 411 US 726 (1972) ---------- 29

Gould v. Gould 245 US 151, 153 (1917) - 30

Harris Truck Lines, Inc. v *Cherry Meat Packers, Inc.*, 371 US 215 (1962) ----- 40

Hazel-Atlas Glass Co v. *Hartford-Empire Co.*, 322 US 238, 244-45 (1944) - 20, 39, 40

Johns-Manville Corp. v. *U.S.*, 893 F.2d 324, 327 (Fed. Cir. 1989) ---------- 38

Johnson v. *Waters*, 111 US 640,667 (1884) 33

Koshland v. *Helvering*, 298 US 441, 447, 80 L.Ed. 1268, 1273 (1936) ---------- 26

Mansfield, C. & L.M. Ry. Co. v. *Swan*, 111 US 379, 387 (1884) ---------- 20, 38

Marshall v. *Holmes*, 141 US 589, 599 (1891) ---------- 33

Mathews v *Lucas* 427 US 495 (1975) ---- 29

McNutt v. *General Motors Acceptance Corp.*, 298 US 178, 189 (1936) -------- 37

National Steamship Co. v *Tugman*, 106 US 118, 122 (1882) ---------- 38

Nudd v. *Burrows*, 91 US 426 (1875) --- 33

Osborn v *Bank of United States* 9 Wheat 738, 6 L.Ed 204 (1824) ---------- 29

Root Refining Co. v. *Universal Oil Products Co.*, 169 F.2d 514, 522 (3d Cir. 1948) ---------- 39

Scar v *C.I.F.*, 814 F.2d 1363, 1366 (9th Cir. 1987) ---------- 20, 34

Spreckles Sugar Refining v *McClain* 192 US 397 (1904) ---------- 30

Stanton v. *Baltic Mining Co.*, 240 US 103, 112-13 (1916) ---------- 28

Stoddard v. *Chambers*, 2 US 284, 318 (1844) ---------- 33

Strange v *Arkansas-Oklahoma Gas Corp.*, 534 F.Supp. 138 (DC WD Ark. 1981) ---- 39

Thompson v *INS*, 375 US 384 (1964) ---- 40

Unemployment Compensation Commission of Alaska v *Aragon*, 329 US 143, 155 (1946) 16

United States v. *Calamaro*, 354 US 351, 1 L.Ed.2d 1394 (1957) ---------- 24-25

U.S. v *Graham* 110 US 219 (1883) ------ 29

United States v. *Grimaud*, 220 US 506, 517 ---------- 26

United States v *Janis*, 428 US 433, 441-42 ---------- 18, 31

U.S. v *Merriam*, 263 US 179, 187 (1923) 30

United States v *Sing Tuck*, 194 US 161 (1904)---------- 16-17

U.S. v. *Throckmorton*, 98 US 61, 64-65 (1878) ---------- 33

Webster v *Luther* 63 US 331 (1895) ---- 29

Wolfsohn v. *Hankin*, 376 US 203 (1964) 40

TABLE OF AUTHORITIES (Continued)

Statutes	**Page**
18 USC §§ 1001, 1018, and 1341 --------	28
26 USC §§ 1 and 3, ----------	32
26 USC §§ 63, 151 ----------	19, 31-32
26 USC § 6014 ----------	22
26 USC § 6020(a) ----------	22
26 USC § 6020(b) ----------	23
26 USC § 6211(a) -- 18, 19, 21-22, 23, 24, 30, 33	
26 USC § 6211(b) ----------	22
26 USC § 6212 ----------	19, 33, 37
26 USC § 6213 ----------	20, 33, 36, 37
26 USC § 6214 ----------	36, 37
26 USC §§ 6651, 6653, and 6654 ------	19
28 USC § 1254(1) ----------	12
28 USC § 2101(c) ----------	12
Regulations:	
26 CFR § 301.6211-1(a) -------	24, 25, 28
26 CFR §§ 601.103(b), 601.105(b), (d) -	18

TABLE OF AUTHORITIES (Continued)

Court rules

Rule 13.1, Supreme Court ---------- 12

Rule 10(c), Supreme Court ---------- 12

Rule 13(a), Tax Court ---- 15, 20, 34, 36

Rule 20(a), Tax Court ---- 15, 20, 34, 36

OPINIONS DELIVERED

A. Opinions by the Court of first instance (United States Tax Court):

(1) "There is a deficiency in petitioner's Federal income tax for the taxable year 1988 in the amount of $6,303.00"

(2) "There is an addition to the tax due from petitioner for the taxable year 1988, under section 6651(a)(1), in the amount of $1,573.00."

(3) "There is an addition to the tax due from petitioner for the taxable year 1988, under section 6653(a)(1), in the amount of $315.00."

(4) "There is an addition to the tax due from petitioner for the taxable year 1988, under section 6654, in the amount of $400.00."

(5) "Damages are due from petitioner which are hereby awarded to the United States in the amount of $3,000, pursuant to section 6673(a)."

B. Opinion of the court of second instance (U. S. Court of Appeals for the Ninth Circuit):

"The June 3 and June 17, 1993 undocketed refusals to file the second and third motions to vacate are not appealable orders of the Tax Court. Consequently, this appeal is dismissed for lack of jurisdiction. All pending motions are denied as moot."

STATEMENT OF JURISDICTION

The order sought to be reviewed was filed in the United States Court of Appeals for the Ninth Circuit on November 22, 1993; and this Petition for Writ of Certiorari is being filed less than 90 days thereafter, pursuant to 28 USC § 2101(c) and Rule 13.1 of the Rules of the Supreme Court of the United States.

Jurisdiction of the Supreme Court is further permitted by Rule 10(c) of the Rules of the Supreme Court of the United States, which permits review when a United States Court of Appeals has decided a federal question in a way that conflicts with applicable decisions of the Supreme Court.

This Petition is for a writ of certiorari pursuant to 28 USC § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution Fifth Amendment: "No person shall be ... deprived of ... property, without due process of law."

In this case due process was subverted by fraud upon the Tax Court, in which a fraudulent notice of deficiency was misrepresented as being valid. Due process was further subverted by the Tax Court by accepting verbatim the notice of deficiency without examining for the underlying lack of evidence. Finally, due process was denied by the Court of Appeals on ground that the last two attempts to convince the Tax Court of the fraud rendered the Notice of Appeal untimely, before the Court of Appeals itself was fully apprised of the circumstances and governing case law, as it refused to accept the Petitioner's Supplemental Memorandum or his Brief.

STATEMENT OF THE CASE

The Court of Appeals for the Ninth Circuit issued an order dismissing the case "for lack of jurisdiction," which was typed on November 17, 1993, one day before the Court received Petitioner's Supplemental Memorandum which confirmed by applicable case law that the appeal was timely due to fraud on the Tax Court. By then the Court had already ruled that "No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket." Thus the evidence which justified an appeal was excluded from the Court's consideration.

BACKGROUND:

On November 15, 1991, the Respondent, Commissioner of Internal Revenue, issued to the Petitioner a notice of deficiency

in income taxes for year 1988, in the absence of any return made by a taxpayer; in lack of any known evidence of a tax-generating activity; without evidence required for determining an amount of tax imposed; and without supporting records indicating the character of the liability and other said items, as required by statutes and Treasury Regulations and case law.

Thereupon Petitioner petitioned the Tax Court for a ruling that no deficiency could exist under the law; and that the Tax Court lacked jurisdiction for that reason plus the lack of a petition to *redetermine* a deficiency, pursuant to Tax Court Rules 13(a) and 20(a) and applicable case law.

The Tax Court construed the notice of deficiency as being valid and the petition as for *redetermining* a deficiency, in

disregard of Petitioner's well-grounded argument of fact and law and emphasis on the wording of the petition. After rendering its decision against the Petitioner on February 11, 1993, the Tax Court regarded all pertinent arguments as having been stated, and denied all subsequent motions for reconsideration and vacation of judgment without disclosing any explanation or justification.

Upon appeal to the U.S. Court of Appeals for the Ninth Circuit within 90 days after the Tax Court's last denial of a motion to vacate judgment, the Court of Appeals ruled that the Tax Court's denial of the last two motions were not appealable orders of the Tax Court and therefore that the appeal was untimely--even though the Petitioner held that all the motions were necessary for exhausting administrative remedies. *Unemployment*

Compensation Commission of Alaska v Aragon, 329 US 143, 155 (1946); *United States v Sing Tuck*, 194 US 161 (1904); *Chicago, M. St. P.& P. R. Co. v. Fistr*, 276 US 567 (1928).

A Supplemental Memorandum which justified making the several motions and which substantiated that the appeal was timely due to extraordinary circumstances and fraud on the Tax Court, was mailed November 15, 1993 and was received at the Court Clerk's office on November 18, the day after the dismissal order had been written. Therefore the Supplemental Memorandum was not accepted by the Court.

ARGUMENT

SUMMARY:

1. The Tax Court's decision was obtained by fraud on the Tax Court perpetrated by the Respondent, Commissioner of Internal Revenue, by

representing a notice of deficiency in income taxes as being genuine and valid when:

(a) The statutory definition of "deficiency" could not be applied because no "tax imposed" could be compared with an amount shown as the tax by the taxpayer on his return, per 26 USC § 6211(a).

(b) No return was examined as required by Treasury Regulations 26 CFR §§ 601.103(b) and 601.105(b) and (d), and as ruled by the U.S. Court of Appeals for the Fourth Circuit in *Abrams v. C.I.R.*, 787 F.2d 939, 941 (1986).

(c) No evidence was shown that the alleged taxpayer had received income from a tax-generating activity, as required per the Supreme Court in *United States v Janis*, 428 US 433, 441-42, and at least 9 Courts of Appeals.

(d) The amount of alleged "taxable

income" was computed in contravention of the statutory definition of "taxable income" in 26 USC § 63, as deductions allowed other than the "standard deduction", as well as the personal exemptions allowed by section 151, were omitted.

(e) The notice of deficiency included penalties under Internal Revenue Code sections 6651, 6653, and 6654 which could not be calculated correctly without a return which was untimely or false in some manner; and no such return was examined.

2. Subject-matter jurisdiction of the Tax Court was lacking and was never established, because:

(a) Internal Revenue Code sections 6211 and 6212 require that a notice of deficiency be valid, i.e., that the alleged deficiency be determined in

accordance with statutes and regulations, in order for Tax Court jurisdiction to be conferred. Tax Court Rule 13(a); *Scar v C.I.R.*, 814 F.2d 1363, 1366 (9th Cir. 1987).

(b) The alleged taxpayer must petition the Tax Court to *redetermine* a deficiency. 26 USC § 6213; Tax Court Rule 20(a). In this case the Tax Court was not so petitioned.

3. Fraud on a court vitiates its decision and tolls the statute of limitations for an appeal. *Hazel-Atlas Glass Co v. Hartford-Empire Co.*, 322 US 238, 244-45 (1944), et al.

4. A decision reached without jurisdiction is legally null and void. *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 US 379, 387 (1884), et al.

THEREFORE, by dismissal of the appeal of this case, Petitioner has been denied due process of law in contravention of

U.S. Constitution Fifth Amendment.

DISCUSSION:

I. THE TAX COURT'S DECISION WAS OBTAINED BY FRAUD.

The issue of whether or not the notice of deficiency was proper and valid rested upon two indisputable facts:

(1) No amount was shown as tax by a taxpayer upon a taxpayer's return, because no return had been filed for the year at issue.

(2) By law, a deficiency cannot exist in the absence of a return made by a taxpayer or by his written approval. *To wit:*

> For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44, the term "deficiency" means **the amount by which the tax imposed** by subtitle A or B, or chapter 41, 42, 43, or 44, exceeds the excess of--
>
> (1) the sum of
>
> **(A) the amount shown as the tax by the taxpayer upon his return**, if a return was made by the taxpayer and an amount was shown as

> the tax **by the taxpayer** thereon, plus
>
> (B) the amounts previously assessed (or collected without assessment) as a deficiency, over--
>
> (2) the amount of rebates, ...

26 USC § 6211(a) in pertinent part. Emphasis added.

Further, the necessity of determining a deficiency on the basis of a return made by the taxpayer (as required also by § 6014), or from information supplied by the taxpayer pursuant to § 6020(a), is emphasized no less than **six times** in § 6211(b) Rules for application of subsection (a).

In the absence of a return, no "amount shown as the tax by the taxpayer upon his return" exists. Therefore, there is nothing which any "tax imposed" can exceed; there is nothing to which it can be compared. Since the statute requires a comparison, **a deficiency cannot be computed without an amount being**

shown as tax on a return made by a taxpayer because no basis for a comparison exists. A "deficiency" without a basis for computing it would be arbitrary and capricious; therefore fraudulently claimed.

There is no provision in the statute for a situation in which no return is filed or no amount is shown as "the tax by the taxpayer." The definition in section 6211(a) which requires an "amount shown as the tax by the taxpayer on his return" for the existence of a deficiency is the only lawful definition of the term "deficiency," as § 6211 states explicitly "For the purposes of this title ... the term 'deficiency' means ..."

There was no evidence that any return had been prepared pursuant to 26 USC § 6020(b). In the event that the document entitled "Income Tax Examination Changes"

which accompanied the notice of deficiency might be construed as a "return," let it be substantiated that "the amount shown as the tax by the taxpayer upon his return" could not lawfully be considered as zero, as suggested by Treasury Regulation 26 CFR § 301.6211-1(a).

The wording of statute 26 USC § 6211(a) quoted above is clear, unequivocal, and unmistakable, as defined either in the Code or by such authorities as Black's Law Dictionary. There is no provision anywhere in § 6211 which permits any exception or extension beyond the precise language used, which emphatically precludes the use of a return made by anyone other than the taxpayer or an amount of tax computed by anyone other than the taxpayer, without his express written authority.

The said Regulation cannot provide for

the instance when no return has been filed, because

> Neither the United States Supreme Court nor the Commissioner of Internal Revenue is authorized to rewrite a revenue statute simply because the scheme created by the statute could be improved upon.
>
> *United States v. Calamaro*, 354 US 351, 1 L.Ed.2d 1394 (1957). See also similar wording in *Badaracco v. Commissioner*, 464 US 386, 398 (1984).

It may be further noted that the part of Regulation 26 CFR § 301.6211-1(a) which provides that in the absence of a return "'the amount shown as the tax by the taxpayer upon his return' shall be considered as zero," adds an idea or provision to the statute which the statute does not express, imply, nor authorize; therefore it is inconsistent with the statute. To consider an amount as "zero" when no amount exists is to fabricate a fictitious amount. Such a fabrication would also require the use of a document other than a return made by the taxpayer

in question. All of these items are inconsistent with the statute.

The Supreme Court of the United States has ruled repeatedly on precisely this situation as follows:

> The regulations were made pursuant to express authority ... They are valid unless unreasonable or inconsistent with the statute. United States v. Grimaud, 220 US 506, 517...
> *Fawcus Machine Co. v. United States*. 282 US 375, 378 (1931). Emphasis added.

> But where, as in this case, the provisions of the act are unambiguous, and its directions specific, there is no power to amend it by regulation. (Manhattan General Equipment Co. V. Commissioner of Internal Revenue, No. 226, October Term, 1935 [297 U.S. 129, ante, 528, 56 S.Ct. 397] and cases cited.)
> *Koshland v. Helvering*. 298 US 441, 447, 80 L.Ed. 1268, 1273 (1936). Emphasis added.

> ... [T]he express words of the Code must control when they conflict with a regulation. The Secretary may not broaden or narrow the specific provisions of the revenue laws. ... A Court may not enforce a regulation which is plainly inconsistent with the revenue statute.
> *Commissioner of Internal Revenue v. South Texas Lumber Co.*, 333 U.S. 496,

501, (1948);

> If the section had in any appropriate words conveyed the thought expressed by the regulation it would thereby have clearly authorized the Commissioner to treat the taxpayer's failure to file a declaration as the equivalent of a declaration estimating his tax at zero and, hence, as constituting a "substantial underestimate" of his tax. But the section contains nothing to that effect, and, therefore, to uphold this addition to the tax would be to hold that it may be imposed by regulation, which, of course, the law does not permit. United States v. Calamaro, 354 US 351, 359 ...; Koshland v. Helvering, 298 US 441, 446 ...; Manhattan General Equipment Co. v. Commissioner, 297 US 129, 134 ... .
>
> * * *
>
> Congress could not add to or expand this statute by impliedly approving the regulation.

Commissioner v. Acker, 361 US 87, 92, 93; 4 L.Ed. 127, 131, 132 (1959). Emphasis added.

To this analysis it may be added that the provision in the Internal Revenue Code prior to 1954 which authorized the amount of self-assessment to be considered as zero in the absence of a return made by

the taxpayer, was deleted in the 1954 revision. No doubt the reason was that such provision made possible the imposition of a direct tax in the guise of the income tax, which has been repeatedly ruled to be indirect, *Brushaber v. Union Pacific RR.* 240 US 1, 16-19 (1916); *Stanton v. Baltic Mining Co.*, 240 US 103, 112-13 (1916).

It is also noteworthy that the portion of 26 CFR § 6211-1(a) which purports to authorize the Commissioner to consider "the amount shown as the tax by the taxpayer upon his return" as zero in the absence of a return has the effect of authorizing him to falsely consider something as being reported which has not been reported, thus authorizing him to make a false entry in a government record, which is a crime under 18 USC §§ 1001, 1018, and 1341.

It is a fundamental principle of

American jurisprudence that where a statute is clear and explicit in is language and its meaning is not doubtful, a contrary agency interpretation of the statute will not be condoned by the courts. *Federal Maritime Com. v Seatrain Lines Inc.*, 411 US 726, 90 S.Ct 314, 24 L.Ed.2d 345 (1972); *Espinoza v Farah Mfg Co.* 414 US 86, 94 S.Ct 334, 38 L.Ed.2d 287 (1973); *Mathews v Lucas* 427 US 495, 96 S.Ct 2755, 49 L.Ed.2d 651 (1975); *Osborn v Bank of United States* 9 Wheat 738, 6 L.Ed 204 (1824); *U.S. v Graham* 110 US 219, 3 S.Ct 582, 28 L.Ed 126 (1883); *Webster v Luther* 63 US 331, 16 S.Ct 963, 41 L.Ed 179 (1895); *Alaska S.S. Co. v U.S.* 290 US 256, 54 S.Ct 159, 78 L.Ed 302 (1933).

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implications, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically

> pointed out. **In case of doubt they are construed most strongly against the Government, and in favor of the citizen.** *Gould v. Gould* 245 US 151, 153, 62 L.Ed 211, 213 (1917) and cases cited therein; *Spreckles Sugar Refining v McClain* 192 US 397, 416, 47 L.Ed 496, 503 (1904); *Eidman v Martinez* 184 US 578, 583, 46 L.Ed 697, 701 (1902); *U.S. v Merriam*, 263 US 179, 187-88 (1923).

Consequently, the Commissioner's and Tax Court's interpretation of section 6211 of the Internal Revenue Code, as permitting a deficiency to be "determined" in absence of a taxpayer's return, is distinctly contrary to both the clear and explicit language of the statute and to repeated rulings of the Supreme Court. The Commissioner had no authority to make a return for, or in the name of, Petitioner Rogers, nor to compute any "deficiency" from any existing document. Therefore the "deficiency" at issue here was unlawfully promulgated; and it constituted a fraud upon the Tax Court.

Further evidence of fraud on the Tax Court is that Neither the notice of deficiency nor any testimony by the Commissioner (Respondent) offered any substantive evidence that Rogers received income from a "charged activity" or "tax-generating activity" as mandated by the Supreme Court in *United States v. Janis*, 428 US 433, 441-42 (1976), and at least nine Courts of Appeals. Therefore the notice of deficiency could not be presumed correct.

Also, the purported determination of deficiency failed to include the deductions "other than the standard deduction" and the "personal exemptions provided by section 151" as mandated by the statutory definition of taxable income in 26 USC § 63. The "standard deduction" was incorrect; and omission of the

deductions other than standard voided the calculation by rendering it fraudulent because it was not in accordance with said definition of the *tax imposed*. (The Federal income tax is imposed upon *taxable income* per 26 USC §§ 1 and 3, which in turn is defined in § 63 as "gross income" minus the said deductions.)

Thus it is demonstrated that the Tax Court was defrauded in three ways: (1) The notice of deficiency was fictitious for lack of a taxpayer's return as a basis. (2) No tax-generating activity was identified; therefore nothing in the notice of deficiency could be presumed correct. (3) No amount of *tax imposed* was lawfully determined.

Conclusion:

> The most solemn transactions and judgments may, at the instance of the parties, be set aside or rendered inoperative for fraud. The fact of

> being a party does not estop a person from obtaining in a court of equity relief against fraud. ... The court of chancery is always open to hear complaints against it, whether committed *in pais* or by means of judicial proceedings. In such cases ... it will scrutinize the conduct of the parties, and if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it.

Johnson v. Waters, 111 US 640, 667 (1884); *Marshall v. Holmes*, 141 US 589, 599 (1891). See similar rulings in *U.S. v. Throckmorton*, 98 US 61, 64-65 (1878); *Mudd v. Burrows*, 91 US 426 (1875); *Stoddard v. Chambers*, 2 US 284, 318 (1844); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 US 238, 244-46 (1944).

II. THE TAX COURT LACKED JURISDICTION TO ADJUDICATE.

By statute, subject-matter jurisdiction of the U.S. Tax Court depends upon both of two things: (1) a notice of deficiency, 26 USC § 6213(a), which must be valid, 26 USC §§ 6212(a), 6211(a); and (2) a petition by a taxpayer to redetermine the

deficiency, 26 USC § 6213(a). These statutes are confirmed in Rules 13(a) and 20(a) of the Rules of Practice & Procedure, United States Tax Court. The necessity of the notice of deficiency being valid has been explained and substantiated in detail by the Court of Appeals for the Ninth Circuit in *Scar v. C.I.R.*, 814 F.2d 1363 (1987). There the Court concluded that

> Failure to comply with statutory requirements renders the deficiency notice null and void and leaves nothing on which Tax Court jurisdiction can rest. [5 citations of case law noted with comments.] *Scar*, Id., at 1370.

Part I of this Argument, supra, demonstrates that the notice of deficiency at issue in this case was not valid. Therefore it did not confer jurisdiction on the Tax Court.

Neither was the Tax Court petitioned to redetermine a deficiency. The first sentence of the Appellant's original

Petition to the Tax Court reads in pertinent part as follows: "The Petitioner hereby petitions for a determination that no deficiency exists relative to the Commissioner of Internal Revenue's purported notice of deficiency dated November 15, 1991 ..." (Emphasis added.) The word *determination* which is the subject of the petition means that the Tax Court was requested to investigate the evidence presented and therefrom to acknowledge and rule that the existence of a deficiency was impossible under the law.

It was obvious from the remainder of the Petition that a *redetermination* of a deficiency could not be undertaken, because the evidence of facts and law presented therein showed clearly that no lawful deficiency had been determined, and therefore that the Court would be unable to *redetermine* something which by law did

not exist.

Consequently, by the non-existence of any deficiency or legal notice of deficiency, a case could not be commenced in the Tax Court to redetermine a deficiency, as set forth by Tax Court Rules 13(a) and 20(a); and no other action mentioned in those rules applied to the Petition or Petitioner. Therefore, per these rules and the aforementioned Code section 6213(a), the Petition did not confer jurisdiction upon the Tax Court.

For the same reasons, the Tax Court had no jurisdiction under 26 USC 6214 to determine any additional amount of alleged deficiency or tax.

These arguments that the Tax Court lacked jurisdiction had been presented to the Tax Court in motions both before the hearing and at the hearing. Neither the Respondent nor the Tax Court Judge

rebutted these arguments. The Tax Court merely stated:

> Respondent issued a valid notice of deficiency, a timely petition was filed, and this Court has jurisdiction of this case. Sections 6212, 6213, and 6214.
>
> *Bench Opinion* by Special Trial Judge D. Irvin Couvillion, Tax Court Docket No. 3296-92, January 14, 1993.

As substantiated above, supra, the notice of deficiency was not valid, the petition did not seek redetermination, and sections 6212, 6213 and 6214 were inapplicable. Therefore, jurisdiction of the Tax Court was not established. As the Supreme Court has ruled:

> The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations or jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof.
>
> *McNutt v. General Motors Acceptance Corp.*, 298 US 178, 189 (1936). Emphasis added.

WHEREFORE, the Tax Court's decision was null and void due to lack of jurisdiction and could not become the basis for a statute of limitations on a time for appeal. *To wit:*

> Ordinarily, by the long established practice and universally recognized rule of common law, in actions at law, the prevailing party is entitled to recover a judgment for costs, the exception being that where there is no jurisdiction in the court to determine the litigation, the cause must be dismissed for that reason, and, as the court can render no judgment for or against either party, it cannot render a judgment even for costs.
>
> *Mansfield, C.& L.M.Ry. Co. v. Swan*, 111 US 379, 387 (1884). Quoted in *Johns-Manville Corp. v. U.S.*, 893 F.2d 324, 327 (Fed. Cir. 1989). Emphasis added.

See also *National Steamship Co. v Tugman*, 106 US 118, 122 (1882).

CONCLUSION

The foregoing arguments demonstrate that the Decision of the Tax Court is vitiated both by fraud perpetrated upon the Court by the Respondent and by lack of subject-matter jurisdiction to render any

decision.

Consequently, dismissal of this case by the Court of Appeals for the Ninth Circuit for lack of jurisdiction due to untimely filing of the appeal denies due process of law and conflicts with the following rulings of the Supreme Court of the United States:

> Any action taken by a federal court which lacks subject matter jurisdiction is a nullity and either party, even the party that invoked the jurisdiction of the court, can attack jurisdiction at any time, even after judgment is rendered against him. *American Fire & Cas. Co. v. Finn*, 341 US 6, 71 S.Ct 534, 95 L.Ed 702 (1951). *Eckert v Lane*, 678 F.Supp. 773, 775 (DC WD Ark. 1988); *Strange v Arkansas-Oklahoma Gas Corp.*, 534 F.Supp. 138 (DC WD Ark. 1981). Emphasis added.

> ...but when the controversy has been set aside by a judgment, its freedom from fraud may always be the subject of further judicial inquiry; and the general rule that the courts do not set aside their judgments after the term at which they were rendered has no application. The matter ... is one of vast public importance... *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 US 238 at page 246 ... *Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d 514, 522 (3d

Cir. 1948). Emphasis added.

> From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry. [Citations omitted here.]
>
> *Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 US 238, 244 (1946).

See also *Wolfsohn v. Hankin*, 376 US 203 (1964); *Thompson v INS*, 375 US 384 (1964); *Harris Truck Lines, Inc. v Cherry Meat Packers, Inc.*, 371 US 215 (1962).

RELIEF SOUGHT

For cause shown, the Petitioner prays the Supreme Court to grant certiorari of this case and to remand it to the Ninth Circuit Court of Appeals with orders to fully hear the case and to render judgment pursuant to the principles of due process of law.

RESPECTFULLY SUBMITTED this 10th day of February, 1994, by

Gordon W. Rogers

Gordon W. Rogers
In Propria Persona
1228 Kossuth Avenue
Everett, WA 98203
Tel. (206) 353-208

APPENDIX

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GORDON W. ROGERS,
Petitioner-Apellant

vs.

COMMISSIONER OF INTERNAL REVENUE SERVICE,
Respondent-Appellee

FILED
NOV 22 1993
CATHY A. CATTERSON,
CLERK, U.S. COURT OF
APPEALS

No. 93-70768
Tax Ct. no. 3296-92

ORDER

Before: SCHROEDER, D.W. NELSON and THOMPSON, Circuit Judges

On October 14, 1993, this court issued an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction because the notice of appeal was filed more than 90 days from entry of the February 11, 1993 decision and the April 26, 1993 order

denying the motion to vacate. See Fed. R. App. P. 13.

The parties have responded to the order to show cause. The September 14, 1993 notice of appeal, postmarked September 10, 1993, was filed more than 90 days from entry of the February 11, 1993 decision and the April 26, 1993 denial of petitioner's motion to vacate the decision. The June 3 and June 17 1993 undocketed refusals to file the second and third motions to vacate are not appealable orders of the Tax Court. Consequently, this appeal is dismissed for lack of jurisdiction. All pending motions are denied as moot.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

PSMoCal 11/17/93/sg
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APPENDIX "B"

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

Dkt. No(s). 3296-92

The enclosed documents 3 motions; memorandum in support; affidavit received 6/16/93 are returned *unfiled* for the following reason(s):

* * *

X Per Judge: Your arguments have been considered in your previous filings.

* * *

Office of the clerk

Date: 6/17/93

APPENDIX "C"

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

GORDON W. ROGERS,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 3296-92

DECISION

Pursuant to the determination of the Court as set forth in its bench opinion rendered on January 14, 1993, at Seattle, Washington, it is hereby

ORDERED and DECIDED that there is a deficiency in petitioner's Federal income tax for the taxable year 1988 in the amount of $6,303.00;

That there is an addition to the tax due from petitioner for the taxable year 1988, under section 6651(a)(1), in the amount of $1,573.00;

That there is an addition to the tax

due from petitioner for the taxable year 1988, under section 6653(a)(1), in the amount of $315.00;

That there is an addition to the tax due from petitioner for the taxable year 1988, under section 6654, in the amount of $400.00; and

That damages are due from petitioner which are hereby awarded to the United States in the amount of $3,000.00, pursuant to section 6673(a).

(Signed) D. IRVIN COUVILLION *
D. Irvin Couvillion
Special Trial Judge

ENTERED: FEB 11 1993

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* Rubber stamp in printed capital letters; no actual signature is shown.--Petitioner.